IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 342 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

KISHOREBHAI R PATEL

Appearance:

1. Criminal Appeal No. 342 of 1992

MS SS PATEL Ld. APP for Petitioner No. 1

MR VG DAVE for Respondent No. 1-2

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 30/04/2002

ORAL JUDGEMENT

This acquittal appeal has been preferred by the State of Gujarat, through Shri M.H. Patel, Food Inspector, Food & Drugs Controller Administration, Ahmedabad under sec. 378 of CrPC.

The appellant has challenged the legality and validity of the order passed by the ld. J.M.F.C., Gandhinagar (Joint Court) in Criminal Case No. 4063 of 1986 on 3.3.1991. According to the prosecution, the respondents-ori. accused have contravent the provisions of sec. 7(1) of Prevention of Food Adulteration Act (hereinafter referred to as "PFA Act'). According to prosecution, a sample of edible groundnut oil was taken from the accused and the same was sent for analysis to the Public Analyst by the complainant and ultimately the same was found adulterated. The opinion of the Public Analyst is at Ex. 15 and it says that the sample does not confirm to the standard. The Ld. J.M.F.C. after regular trial acquitted the accused by impugned decision. Along with the other grounds, ld. JMFC has held that the sanction to prosecute the accused person is not a legal or valid sanction and the prosecution has failed to prove that the same has been granted after proper application of mind.

During the course of oral submissions of the ld. counsel appearing for the parties, a pointed query has been raised to ld. APP Mr. SS Patel as to whether doctrine of perspective over rulling would be applicable in the present set of facts. Considering the relevant dates, Mr. Patel has fairly submitted that the decision of this Court reported in 1994(2) GLH p. 332 in the case of Arvindkumar Trikamlal Raval vs. Ratilal Hemaji & Anr. would be applicable to the present set of facts so far as the principle is concerned. The date of decision acquitting the accused is of 30.3.1991 and the law considered by the trial court was a good law on that relevant date. Subsequent over ruling of earlier decision would not make the decision under challenged unsustainable at law. The other decision of this court reported in 2002(1)GLH p. 296 also helps the present respondents-accused.

For short, considering the ratio of both the decisions and the fact that the accused was prosecuted in the year 1986, there was no use of holding the accused only technically guilty. The view expressed by the Ld. J.M.F.C. on the relevant point of time was not contrary to law and, therefore, this appeal against the acquitted is dismissed.

(C.K. BUCH, J.)

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